IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 827 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAMESHBHAI CHHOTABHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR G RAMAKRISHNAN for Appellant

MR KT DAVE, AP for respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE J.R.VORA

Date of decision: 07/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.R.VORA)

1. This appeal is directed against the judgement and order dated 11th August 1995, delivered by Additional Sessions Judge, Panchmahals at Godhra in Sessions Case

No.96/94, wherein the present appellant was accused no.1. The present appellant Ramesh Chandubhai Raval as well as accused no.2 Rajubhai Chandubhai Raval, both were charged for the offence punishable under sections 302, read with section 34 of IPC. Learned Additional Sessions Judge acquitted the original accused no.2 Rajubhai Chandubhai Raval, while convicted the present appellant-original accused no.1 for the offence punishable under section 302 of IPC and he was sentenced for life imprisonment as well as fine of Rs.5000/-, in default, to undergo two years simple imprisonment.

2. The complainant in this case is Chandubhai Chhotubhai Raval and accused no.1-present appellant is his younger brother. Kanubhai Chandubhai Raval, the victim and deceased in this case, is also another younger brother of the complainant as well as accused no.1, present appellant. The complainant Chandubhai Chhotubhai Raval at the relevant time i.e. on 4th May 1994 was staying at Dakor with his wife Niruben. Originally Chandubhai belonged to village Mithapur. Chandubhai married to Niruben 10 years before the incident occurred on 3rd May 1994. The couple had no issue.Due to this, the father of Chandubhai, the present appellant and his younger brother frequently directed Chandubhai to drive away Niruben, his wife and to get remarried and were picking up quarrels with complainant Chandubhai frequently. However, Chandubhai did not obey the directions of his father Chhotubhai and the present appellant in respect of his wife. Kanubhai, the younger brother of the complainant Chandubhai and deceased in this incident, was also staying with the complainant Chandubhai. The deceased was doing job in a private shop of one Keshubhai Bhavsar at Dakor and he had married the sister of Niruben viz. Rajeswariben two years prior to the incident. Thus, the wife of the complainant Niruben and the wife of deceased Kanubhai, both are real sisters. Kanubhai and his wife had a baby boy aged one year at the time of the incident. Since the complainant had no issue, the child of Kanubhai was adopted by the complainant Chandubhai and his wife as their own son. On this issue also the present appellant in association with accused no.2 Rajubhai Chandubhai used to pick quarrels with Chandubhai and deceased Kanubhai. Both of them i.e. the present appellant and original accused no.1, a month prior to the incident, had been to Chandubhai and Niruben and had quarrelled with them. At that time deceased Kanubhai had intervened. Thereafter the complainant and deceased Kanubhai on one side and Chandubhai and accused no.1 on the other side, had a strained relationship and therefore the complainant avoided visiting his native

place at Mithapur. On 3rd May 1994 a marriage was arranged of one Arvindbhai, son of Jashubhai Shankerbhai Raval staying at Mithapur. The marriage was to take place at village Kalyana. The complainant was invited, but since he was not visiting his native place Mithapur, the deceased Kanubhai arranged to remain present in the said marriage. On 3rd May 1994 Kanubhai left Dakor to attend the marriage at abut 8 O' clock in the morning, but till night he did not return. On 4th May 1994 at about 7 O' clock in the morning one Dhulabhai Dahyabhai (PW5) visited the complainant at Dakor at his residence. He informed the complainant that on 3rd May 1994 at about 5-6 O' clock in the evening, the younger brother of the complainant viz. Kanubhai had been murdered by the present appellant and accused no.2 Rajubhai Raval by inflicting knife blows by the appellant. The complainant was also informed that the dead body of Kanubhai was lying at the house of his father at village Mithapur. The complainant was further informed by Dhulabhai that he was called by his father Chhotabhai. On receiving this information, the complainant went to Dakor police station on that day i.e. 4th May 18\994 at 8 O' clock in the morning and lodged complaint about the incident and the information which he had received from Dhulabhai. Police Constable Laxmanbhai Shankerbhai (PW10) recorded the complaint as First Crime Register No.0/94. PSI Khant of Dakor Police Station investigated the complaint and arranged to draw an inquest panchnama. The dead body of the deceased was then sent to Dakor Community Health Centre for postmortem. Since the offence was committed at village Kalyana situated within the jurisdiction of Godhra District, Dakor Police Station forwarded the original complaint and inquest panchnama to Taluka Police Station of Godhra on that very day at 13.45 hours where the offence was registered against both the accused vide C.R. No.97/94 under section 302 read with section 34 of IPC. PW9 PSI Ranjitsinh Gohil of Godhra Taluka Police Station undertook the investigation and filed a chargesheet in the court of learned Judicial Magistrate (First Class) at Godhra. Thereafter the case was committed to the Court of Sessions at Panchmahals at Godhra. A charge was framed against both the accused for the above said offences vide Exh.2 to which both the accused pleaded not guilty. Prosecution therefore examined 10 witnesses and produced 15 documentary evidence. After recording the statement of both the accused under section 313 of the Criminal Procedure code, prosecution as well as defence were heard by learned Additional Sessions Judge, Panchmanhals at Godhra. Ultimately, vide the impugned judgement, learned Additional Sessions Judge came to the conclusion that so

far as the present appellant-original accused no.1 was concerned, the prosecution was able to establish the guilt under section 302 of IPC and he was sentenced as aforesaid, while the learned Additional Sessions Judge acquitted the original accused no.2 Rajubhai Chandubhai. Being aggrieved by the said impugned jdugement this appeal is filed, through jail, by the original accused no.1 Rameshbhai Chhotabhai Raval.

3. Heard the learned counsel for the appellant and Mr. K.T. Dave, learned APP. We have carefully gone through the testimonial collection of evidence as well as documentary evidence on record. Learned counsel for the appellant has taken us through the important and relevant evidence on record in detail. We have reappreciated and scanned the evidence also in detail.

4. To prove its case, the prosecution examined PW1 Madhavsinh Chauhan who was a panch witness of panchnama of scene of offence. The said witness in all respects has supported the prosecution case, and the panchnama of scene of offence is on record at Exh.17. Thus, the prosecution was able to establish the place of occurrence. Though PW1 has been cross-examined by both the accused, the fact remains proved that panchnama Exh.17 was drawn as proposed by the prosecution. PW2 Balvantsinh Ranchhodbhai is a panch witness of the discovery panchnama of the knife recovered from accused no.1, the present appellant. The sum and substance of the evidence of PW2 is that he and other panchas were called upon by the police on 6th May 1994 at Taluka Police Station, Godhra, where the appellant was present. The appellant informed the panchas that he intended and was prepared to show the knife. A preliminary panchnama was drawn in this respect. Thereafter the present appellant, both the panchas and the police in a police van as guided by the appellant went to Ahmedabad Highway till Vasad cross-roads where ahead of the Vasad cross-roads, near river Mahisagar, all of them got down and the appellant again guided them. There was a eucalyptus tree at some distance of the river and the appellant went to that tree. After removing eucalyptus leaves from the ground as per the instruction of the appellant, this witness recovered a knife which he identified to be the same knife as the muddamal article. Thus, this witness supported the discovery of weapon as referred in panchnama of discovery which is record at Exh.19. It was also established that the knife was stained with blood. The prosecution further established the fact that the recovery was at the instance of the accused and the muddamal article knife was recovered from

underneath the leaves of a eucalyptus tree. PW2 has been extensively cross-examined on behalf of both the accused, but nothing could be pointed out to cast a stigma on the evidence of PW2. The prosecution examined PW3 Sukabhai alias Ratilal Shanabhai. According to the prosecution case, this witness was the witness of the incident. He saw the appellant no.1 inflicting knife blows on the deceased Kanubhai near the Ambaji Temple where the marriage party was waiting to board the truck to return to village Mithapur from village Kalyana. However, this witness has not supported the prosecution case. This witness deposed to the extent that at village Kalyana, after the marriage they came near the Temple which is situated on the outskirts of village Kalyana. He stated that Kanubhai was lying on the ground and there was blood on his clothes as well as on his chest. He further stated that Kanubhai was motionless and speechless. According to this witness, thereafter Kanubhai was taken to village Sansoli where he was declared dead by doctor. This witness, though has turned hostile as to the vital part of the prosecution case that the appellant no.1 quarreled with deceased Kanubhai and inflicted knife blows, he stated that Kanubhai was found lying at the outskirts of village Kalyana and that there was wound on his left chest and blood on his clothes. He supported the case of the prosecution that the deceased was taken to village Sansoli where he was declared dead. This witness though turned hostile and has not supported the vital part of the prosecution story, his version to the extent that he found the deceased Kanubhai lying on the ground in injured condition can be considered as supporting evidence to the prosecution case.

5. PW4 Laxmansinh Chhatrasinh is the important star witness of the prosecution who is an eye witness of the incident. PW4 deposed that since last six months he was serving as a conductor of the Truck No.GJ 17-T-6986 belonged to one Bhimsinh Mathurbhai. He further deposed that Vinodbhai Maganbhai (PW7), was the driver of the said truck at the relevant point of time. He did not know the deceased. On 3rd May 1994 he along with the driver had been to village Kanod for loading sand in the truck. The said sand was unloaded at village Mahuda and thereafter they went to village Kalyana. The truck was parked near the road at village Kalyana. Earlier on that day, according to this witness, they had boarded the marriage party from village Mithapur and left them at village Kalyana and thereafter the marriage party was to return from village Kalyana to Mithapur along with the bride after marriage. There was a quarrel in the marriage party near the temple. In this quarrel the

appellant inflicted knife blows to his younger brother. According to this witness, before that there was some altercation between the brothers. The persons gathered there dispersed immediately after the deceased suffered injury. After the injury, according to this witness, the deceased had fallen down on the ground and therefore he himself, the driver and the father of the deceased removed the injured from the said place in the truck and was taken to village Sansoli where doctor refused to treat the injured. From there, according to this witness, they returned again to village Kalyana and requested the father of the deceased to take the body of the deceased from the truck. The father of the deceased requested this witness and the driver to take the dead body to village Mithapur and therefore the deceased was thereafter taken to Mithapur, where the dead body was taken out of the truck. This witness deposed that he did not know the reasons for the dispute. This witness has been extensively cross-examined by both the accused. Yet the fact remains that the defence was not able to cast any shadow on the evidence of this witness.

6. The prosecution examined PW5 Dhulabhai Dahyabhai at Exh.25. According to the case of the prosecution, this witness was requested by the father of the deceased Chhotabhai to go to Dakor and inform the complainant about the incident and to request him to come to Mithapur. He has not supported the case of the prosecution and has been declared hostile by the prosecution. He deposed to the extent that he was at Mithapur and came to know that Kanubhai had died. Therefore, he visited the residence of Chhotabhai and found that Kanubhai was dead. This witness has not supported the version of the prosecution that he was sent by Chhotabhai to Dakor to inform about the death of Kanubhai to complainant Chanduhai. He has been cross-examined on behalf of the prosecution as well as defence.

7. The prosecution examined PW6 Dr. Udaykuamr Sureshkumar Shah at Exh.30. He is the doctor who conducted the postmortem of the dead body of the deceased. According to his deposition, on 4th May 1994 he was serving as Medical Officer at Community Health Centre, Dakor. On 4th May 1994 the Police Constable Maganbhai with Yadi at 9.30 in the morning brought the dead body of Kanubhai Chhotabhai Raval for postmortem. He was served with copy of the inquest panchnama and other necessary papers. The postmortem was conducted by him on the dead body at 9.45 horus and was completed at 11 hours. According to him the dead body was of a male

aged 30 years, there were clothes on the deady body, shirt and under shirt were stained with blood and shirt was cut below the pocket. Corresponding cut was also there in under shirt. There was incised wound on the side of the left chest deep upto 5 to 6 inch. One incised wound was on the left armpit. One more wound was on the left side of the shoulder. It was found that there was a fracture on 5th rib and fracture on upper part of 6th rib. The injuries were antemortem. The wound which was on the chest was deep upto the heart and there was injury on the heart admeasuring 3/4" x 1/2" on the left side. It was deposed by him that the cause of death was due to incised penetration wound (stab would) on the left side of the chest leading to the injury to heart and hemorrhage shock leading to cardiac failure. This witness was cross-examined by both the accused, but so far as the fact as to the injuries suffered by the deceased is concerned,nothing could be pointed out to disbelieve the deposition of this witness. The prosecution through this witness has amply established that the death of the deceased was homicidal death. The cause of death as deposed by this witness remained unchallenged and stood established by the prosecution. The doctor further opined that the injuries were of the nature that would have caused instantaneous death of the deceased.

8. The prosecution examined PW7 Vinodbhai Maganbhai Raval at Exh.39. He is the other star eye witness of the prosecution case. According to his deposition he had been serving as a driver before one and half years of the incident in a truck bearing GT-17-T-6986 belonged to one Bhimsinh Mathurbhai of village Rania. He also confirmed that on the day of the incident Laxmansinh Chhatrasinh (PW4) was the cleaner on the said truck. On 3rd May 1994 at abut 8 O' clock in the morning the truck was loaded with a marriage party at Mithapur and the destination was village Kalyana. There was marriage of one Arvind Shankerbhai. According to this witness Jasubhai, the grand-father of Arvindbhai was maternal uncle of this witness. There were 50-60 persons in the marriage party. They reached at village Kalyana at about 10 O' clock in the morning. This witness further deposed that in the said truck his maternal uncle Chhotabhai Motibhai was also there. It is pertinent to note here that PW7 Vinodbhai refers to Chhotabhai Motibhai, the father of the deceased, as his maternal uncle. He further deposed that he did know Kanubhai and Kanubhai was in the marriage party and had boarded the truck. Accused no.2 was also in the said marriage party. he identified both the accused in the court. He further deposed that the

marriage party descended from the truck at the outskirts of village Kalyana and thereafter along with the cleaner he went to village Kanod for loading the truck with sand. The truck was thereafter unloaded at village Mahudha and thereafter at abut 6 O 'clock in the evening he again with the truck went to village Kalyana. At the outskirts of village Kalyana a temple of Goddess Ambaji is situated where he parked his truck. The cleaner of the truck PW4 was also present at that time.According to this witness, he sat on the Otla of the said Temple. While he was sitting on the Otla he witnessed that the accused no.1, present appellant and Kanubhai had exchange of words. Thereafter the appellant inflicted knife blows around the chest of the deceased Kanubhai and around his shoulder. This witness further deposed that a knife blow was also inflicted by the appellant to the deceased on the back. The members of the marriage party were present at that time. Accused no.2 was also present at the place of the incident, but he was inactive. The deceased has fallen down to the ground and on the request of father of the deceased Chhotabhai, deceased was taken to the hospital at village Sansoli. The doctor refused to treat the deceased. Ultimately according to the deposition of this witness, in the said truck the deceased was taken to village Mithapur at the residence of the father of the deceased. According to this witness, his statement was recorded by the police on the 2nd day of the incident. PW7 also was cross-examined by the defence. No material or major contradiction could be brought by the defence in the evidence of PW7. An attempt was made by the defence to suggest to the witness that he had not witnessed the incident, which the witness categorically denied. An attempt on behalf of the defence was made to show that this witness had no opportunity to watch the incident. A contradiction in respect of the place from where this witness watched the incident is also attempted by the defence. However, nothing material could be brought on record to affect the creditworthiness of this witness.

9. Complainant Chandubhai Chhotabhai Raval was examined by the prosecution at Exh.40. Admittedly the complainant is not the eye witness of the incident. But he has deposed that he and his wife Niruben were serving as teachers in the primary school at village Suigam and were residing at Dakor. The couple had taken in adoption the child of deceased Kanubhai and the child was about one year old when the incident took place. The complainant has also deposed that his wife Niruben and wife of the deceased viz. Rajeswari, both were real sisters. It is also deposed that his father Chhotabhai as well as the appellant disallowed and disapproved the

act of the complainant of taking the child of his younger brother in adoption. It is also deposed by him that on this issue both the accused along with his father were picking up quarrels with him and due to this he avoided going to Mithapur which was his native place. On 3rd April 1994 marriage of his relative Arvindbhai was arranged at village Kalyana and he was invited. But deceased alone decided to attend the marriage and for that purpose deceased left Dakor at about 8 O' clock in the morning and he did not return to Dakor till night. The deceased and his wife were staying with the complainant. On 4th May 1994 at about 7 O' clock Dhulabhai Dahyabhai (PW5) informed this witness that on previous day at village Kalyana at about 5-6 O'clock in the evening the appellant and accused no.2 Rajubhai Raval murdered Kanubhai by inflicting injuries by knife. It was also informed by Dhulabhai that the dead body of Kanubhai was lying at the house of his father at Mithapur and he (the complainant) was called by his father. On receiving this information, according to this witness, the complainant went to Dakor police station where he lodged his complaint. He further deposed that a month before the incident, the appellant, his father Chhotabhai and original accused no.2 Rajubhai had been to his residence at Dakor and had quarrel with him. The compliant which he lodged before Dakor police station is on record at Exh.41. In the cross-examination of the complainant some suggestions were put to the complainant. An attempt has been made to show that there was a dispute about returning of money lent to this complainant by his father and for that reason the complainant had filed complaint at Exh.41. Complainant categorically denied this allegation. There were other allegations also about the complainant beating his father, which was also categorically denied by this witness. Nothing significant could be brought out in his cross-examination so as to discredit his evidence. He has supported fully his complaint lodged by him before Dakor police station which is at Exh.41. No contradiction whatsoever has been elicited. The complainant has amply proved the contents of the complaint Exh.41.

10. Thereafter the prosecution examined two investigating officers i.e. PW9 PSI Ranjitsinh Gohil of Godhra Taluka Police Station who conducted the investigation at Exh.42, and PW10 Head Constable Laxmanbhai Shankerbhai of Dakor Police Station, who recorded the complaint of the complainant.

11. Learned advocate for the appellant attacked the prosecution case on various grounds. It was urged that

the evidence of PW7 Vinodbhai Maganbhai Raval and PW4 Laxmansinh Chhatrasinh is in contradiction. It is suggested that there is an attempted improvement in their depositions. It was also urged that there is a contradiction between the medical evidence and ocular evidence of these witnesses and therefore the evidence of these two witnesses are not creditworthy. It was also contended that the marriage party consisted of 50-60 persons, but none of these was cited as a witness. It was urged that contradiction in the evidence of PW7 Vinodbhai Maganbhai goes to the root of the prosecution case inasmuch as before the police this witness stated about inflicting of one injury, while in his deposition before the Court this witness referred to three injuries. The other eye witness PW4, according to the learned advocate for the appellant, did not categorically state as to on which part of the body the injuries were inflicted and therefore their deposition ought not to have been believed by the trial court. It was also urged that the incident occurred on 3rd May 1994 at about 6 O' clock and FIR was lodged on the next day at about 8 O' clock. This delay is not explained by the prosecution. It was also urged that the statements of the eye witnesses were recorded by the police only on 6th May 1994 and therefore they were got up witnesses and cannot be believed.

12. As against that learned APP Mr. K.T. Dave has supported the judgement impugned in the appeal.

13. We have scanned and scrutinised the evidence on record very carefully. We find that the prosecution established certain facts beyond reasonable doubt to which the defence has no challenge. It was established that the deceased had been to village Kalyana to attend the marriage and had boarded the truck driven by PW7. It is also an established fact that Kanubhai was attacked and injured on the outskirts of village Kanod near the temple of Goddess Ambaji and died there. The prosecution clearly established the fact that the death of Kanubhai was homicidal death due to the injuries which he received.

14. The prosecution has made an attempt to prove its case through two eye witnesses PW4 and PW7. Complainant PW8 proved that he had strained relations with his father and the appellant. The reason was the adoption of the child of the deceased by the complainant. It is proved that even a month back before the incident took place, both the accused and the father of the complainant visited the complainant at Dakor and they picked a

quarrel on account of the adoption of the child. It is, therefore,also proved that the complainant avoided visiting his native village Mithapur. These circumstances set the background which led to the occurrence of the present incident. Due to these circumstances, the marriage of one Arvindbhai, the relative of the family was arranged, deceased Kanubhai alone left Dakore and joined the marriage party, while PW3 Sukabhai alias Ratilal Shahabhai, examined by the prosecution, was a member of marriage party. Though in other respect he did not support the prosecution case, but he admitted that the deceased Kanubhai was a member of said marriage party, and that he met with death at the outskirts of village Kalyana.

15. Thus, the prosecution was able to prove the above mentioned supportive facts. Now we shall examine the evidence of both the eye-witnesses PW4 and PW7. On scrutinising the evidence of these two witnesses, we clearly find that the presence of PW7 Vinodbhai Maganbhai Raval, driver of the truck was natural at the scene of incident. The evidence of this witness assumes great importance in order to arrive at a just decision. The truck of this witness was selected because he happens to be nephew of grand-father of bridegroom Arvind, meaning thereby that Jashubhai, grand-father of Arvind happened to be maternal uncle of this witness. It is important to note that he also addressed the father of the deceased Chhotabhai as his maternal uncle. This is clear from the evidence of PW7. This fact has not been challenged by the defence through cross-examination or otherwise. PW7 therefore was not only an eye witness for the prosecution, but was also a relative of the father of the deceased. This evidence leads us to conclude that there was no reason for this witness to come to the court and state something which has not take place so as to rope in the present appellant, in a grave and serious trial of murder. On the contrary, the evidence of this witness is worthy of credence for his truthfulness. On a minute study and careful examination of the deposition of this witness along with the examination of attending circumstances as mentioned above, we find that his evidence is spotless and by no stretch of reasoning could it be said that no reliance can be placed on the evidence of this witness. It is immaterial whether the witness watched the incident while he was sitting at the Otla of the Temple or he witnessed the incident from sitting somewhere else. This is not a fact which would destroy the whole version of this witness. After a lapse of time, when witnesses depose to an incident, such minor discrepancies are but natural. So far as the major and

vital evidence as to inflicting of injuries by the appellant to the deceased is concerned, the evidence of this witness could not be shaken by the defence and therefore it is established that this independent witness saw the appellant inflicting injuries by a knife to the deceased and injuries found less by the medical expert than deposed by the eye witness nor an injury found more by medical expert than deposed by the witness makes any significant effect on prosecution case. So far as the deposition of the witness who actually saw the incident is concerned, the probative value, creditworthiness of the witness on evaluation, the presence of the witness at the scene of offence, the power of an average human being to imbibe what he witnessed and his power to reproduce the same after a lapse of time, are the material factors for the appreciation of evidence of eye witnessses. While we examine the evidence of this witness, we are inclined to place reliance on his statement to the extent that he actually saw the appellant inflicting injuries on the body of the deceased. Therefore, it would not at all be material as to how many injuries the witness observed and it is also not necessary that such witness must note and state the exact part of the body where each of the blows was inflicted. In his evidence, this witness amply says that the injuries were inflicted by the appellant around chest, on the shoulder and on the back of the deceased. Only because the medical expert did not find any injury on the back of the deceased, the evidence of this witness cannot be branded as unreliable.

16. At the same time PW7 is supported by the evidence of PW4 Laxmansinh Chhatrasinh. The presence of this witness at the scene of offence is found natural being the conductor of the truck which was booked for the marriage party. We do not find any contradiction in the evidence of PW4 and PW7. As discussed above, this independent witness clearly stated that the appellant inflicted knife blows to the deceased, although he frankly admitted that he did not observe as to where the blows landed on the body of the deceased. But he emphatically stated that he did see the appellant inflicting knife blows to the deceased. The evidence of this witness appears to be quite natural and supportive of the evidence of PW7 Vinodbhai. It was very easy for him to depose, if he had been tortured, as to where the blows landed on the body of the deceased. But to be extremely truthful and he being a natural witness, he stated what he actually saw. Nothing material could be alleged by the defence that as to why the evidence of this eye witness should not be believed and relied upon. When we assess the evidence of investigating officer PW9

Ranjit Gohil at Exh.42, we found the contradiction which was sought to be proved by the defence through this witness in respect of above two eye witnesses are in fact mere discrepancies not going to the root of the prosecution case. So far as the main incident is concerned, the fact that both the witnesses saw the incident remains established. The contradictions which are sought to be suggested in respect of these two witnesses are only as regards some previous circumstances, and in respect of what followed the incident.

17. Thus, having scrutinised the evidence of these two eye witnesses and the evidence of the complainant, we are of the opinion that the prosecution has amply proved its case beyond reasonable doubt. There is no conflict as alleged between the ocular as well as medical evidence. It is not the case that the eye witnesses deposed that the injuries were on the legs and medical expert found that the injuries on hand. It is the case where witnesses say that the injuries were inflicted on the body of the deceased and the doctor found that there were injuries on left side of the chest and shoulder of the deceased. It would be unjust to discard the whole version of the eye witnesses on this account. So far as filing of the complaint is concerned, it is amply proved by the prosecution that though the incident occurred on 3rd April 1994 in the evening, the complaint was lodged by the complainant on the next day at 8 O' clock in the morning at Dakor police station. Having regard to the circumstances of the prosecution case, there is no delay at all. The fact is established on record that there were strained relations between the complainant and his father Chhothabhai. The deceased was staying with the complainant and therefore it was quite natural that the deceased was also not approved by the father of the complainant and the appellant. This is more so on account of the adoption of the child of the deceased by the complainant. The complainant came to know about the incident only on 4th April and immediately he lodged the complaint. The evidence of the complainant is found trustworthy and he supported the complaint. The accused of the crime was the son of Chhothabhai and therefore it was quite natural on the part of the Chhothabhai and his family to avoid filing of of a complaint against his own son. As soon as the complainant Chandubhai received the information he lodged the complaint. In these circumstances it cannot be said that there was an uneplained delay in filing the complaint.

18. The trial court has not placed any reliance on

the evidence of discovery of knife from the present appellant. The trial court observed that the discovery of weapon was from an open place and therefore no reliance can be placed on such discovery. We have examined the evidence of PW2 Balvantsinh, Exh.18. He is the panch witness of panchnama of discovery which is at Exh.19. When we assess the evidence of PW2 along with the evidence of investigating officer PW9, we find that the conclusion of the trial court about the discovery of the weapon from the open place was erroneous. PW2 has clearly stated that in their presence the accused stated that he wanted to show where the knife was placed. According to the panchnama the police and panchas were led by the appellant to the place of discovery and as per the instructions of the appellant, muddamal article knife was discovered from below eucalyptus leaves under a eucalyptus tree. It is not the case of the prosecution that the weapon was ostensible and could be seen by anyone, nor could the defence show that the weapon was placed in a manner where public had access. It is true that the knife was beneath a eucalyptus tree, but at the same time prosecution proved that on showing the place, the knife could be recovered by the PW2 after removing the leaves of eucalyptus as per the instruction of the appellant. Oabviously the knife was concealed from casual observation by the leaves. The facts as found proved by the prosecution indicate that the weapon was concealed beneath the leaves. We, therefore, come to the conclusion that the prosecution was able to prove the discovery panchnama. Now going further, when we read the serological report at Exh.14 and 13 we found that the Article no.4 knife was stained with human blood of "A" group. The serological report Exh.14 further reveals that article no.1 shirt and article no.3 pant recovered from the deceased was also stained with blood group "A". This evidence is also very strong evidence against the present appellant.

19. In view of the above, we are unable to accept the contention raised on behalf of the appellant. We find that the evidence of prosecution is credible, trustworthy and reliable, more particularly the evidence of the two eye witnesses and the complainant. The prosecution therefore has successfully proved the guilt of the present appellant. In this view of the matter we are not inclined to interfere with the judgement impugned in this appeal.

20. For the reasons stated above, the appeal stands dismissed.

[Y.B. BHATT J.]

[J.R. VORA J.]

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